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 RECEIPT # 53084  
 AMOUNT \$ 150  
 SUMMONS ISSUED X-1  
 LOCAL RULE 4.1 \_\_\_\_\_  
 WAIVER FORM \_\_\_\_\_  
 MCF ISSUED \_\_\_\_\_  
 BY DPTY. CLK. 11  
 DATE 1-13-04

UNITED STATES DISTRICT COURT  
 DISTRICT OF MASSACHUSETTS

AQUA-LEISURE INDUSTRIES, INC., )

Plaintiff, )

vs. )

GEMMY INDUSTRIES CORPORATION, )

Defendant. )

JAN 13 A 9:46

Civil Action No.

U.S. DISTRICT COURT  
 DISTRICT OF MASS.

04 cv 10070 RGS

COMPLAINT FOR DECLARATORY JUDGMENT

PARTIES

1. Plaintiff Aqua-Leisure Industries, Inc. (hereinafter "Aqua-Leisure") is a corporation organized and existing under the laws of the Commonwealth of Massachusetts with a principal place of business at 525 Bodwell Street Extension, Avon, MA 02322.

2. Defendant Gemmy Industries Corporation (hereinafter "Gemmy") is a Texas corporation with a principal place of business at 2111 W. Walnut Hill Lane, Irving, Texas 75038. On information and belief, Gemmy conducts business throughout the United States, including within this judicial district.

JURISDICTION AND VENUE

3. This action arises under the federal patent laws, 35 U.S.C. § 1 et. seq. In addition, this court has subject matter jurisdiction over the action pursuant to 35 U.S.C. §§ 271 and 282,

and 28 U.S.C. §1338(a), as well as 28 U.S.C. § 2201 (the Declaratory Judgment Act). Venue is proper in this District pursuant to 28 U.S.C. §1400.

FACTS

4. Aqua-Leisure is in the business of the production and sale of inflatable products, including inflatable toys.

5. On or about December 22, 2003, Aqua-Leisure received, at its offices in Avon, Massachusetts, a letter from counsel for Gemmy, asserting that Gemmy owns U.S. Patent No. 6,644,843, that Aqua-Leisure is "making, having made, importing, distributing or selling large, self-inflating decorative figures in the United States," and that "such inflatable figures infringe the claims of" the Gemmy patent. A copy of that letter is attached as Exhibit A hereto.

6. Gemmy's letter demands that Aqua-Leisure "immediately and permanently cease and desist from the manufacture, importation, distribution and sale of all infringing products in the United States." It further states: "Unless we receive written notice by January 10 certifying that [Aqua-Leisure] has complied with this demand, together with a full accounting of all units made and sold to date, Gemmy will be forced to institute legal action, as it already has against other sellers."

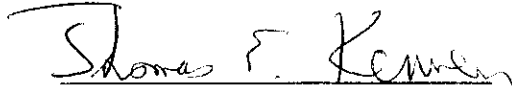
DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF U.S. PATENT NO. 6,644,843

7. By reason of said letter from Gemmy's counsel, Plaintiff Aqua-Leisure is under reasonable fear and apprehension that Gemmy will commence a lawsuit against Aqua-Leisure for alleged infringement of U.S. Patent No. 6,644,843.

AQUA-LEISURE INDUSTRIES, INC.



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